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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re

Chapter 11

Calpine Corporation, et al.,

Case No. 05-60200 (BRL)

Debtors.

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**APPELLANT’S STATEMENT OF ISSUES ON APPEAL  
AND DESIGNATION OF ITEMS TO BE INCLUDED IN  
RECORD ON APPEAL**

Appellant Mark Daley, by his attorneys, Wander & Associates, P.C., hereby submits his statement of issues on appeal and designation of the record on appeal, pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure.

**STATEMENT OF ISSUES**

1. Did the Bankruptcy Court err in finding that the Calpine Marketing and Sales 2003 Incentive Plan (the “MS Plan”) provides Calpine Corporation (“Calpine”) unrestricted discretion regarding the decision to fund or not fund the bonus pool?
2. Did the Bankruptcy Court err in finding that the MS Plan provides Calpine unrestricted discretion regarding the decision to pay or not pay bonus compensation?
3. Did the Bankruptcy Court err as a matter of law in failing to conclude that the determination by Calpine’s Chairman not to recommend funding of the 2005 bonus pool breached Section IX of the MS Plan?

4. Did the Bankruptcy Court err as a matter of law in failing to conclude that the determination by Calpine's Chairman not to recommend funding of the 2005 bonus pool violated the implied covenant of good faith and fair dealing?

5. Did the Bankruptcy Court err as a matter of law in concluding that Calpine's decision to not pay bonuses for the year 2005 was expressly permitted by the MS Plan?

6. Did the Bankruptcy Court err as a matter of law in concluding that Mark Daley's proof of claim (the "Claim") was legally insufficient?

7. Did the Bankruptcy Court err as a matter of law by failing to apply the proper standard of review in granting what was, in effect, a motion to dismiss for failure to state a claim upon which relief may be granted?

8. Did the Bankruptcy Court err as a matter of law in concluding that the doctrine of promissory estoppel was unavailing to support the Claim?

9. Did the Bankruptcy Court err as a matter of law in concluding that the doctrine of estoppel by conduct was unavailing to support the Claim?

10. Did the Bankruptcy Court err as a matter of law in concluding that the doctrine of unjust enrichment was unavailing to support the Claim?

#### **DESIGNATION OF RECORD**

<b>Item No.</b>	<b>Docket No.</b>	<b>Document</b>
1.	TBD or Claim #6027	Proof of Claim by Mark Daley
2.	9	Debtors' motion for an Order authorizing payment of certain prepetition property tax claims

3.	13	Debtors' motion for authorization to pay prepetition sales, use and franchise taxes.
4.	269	Debtors' motion for an Order establishing procedures for interim compensation and reimbursement of expenses of professionals
5.	1054	Debtors' motion for entry of an amended Order authorizing payment of certain prepetition property tax claims
6.	1275	Statement of Financial Affairs for Calpine Corporation
7.	1717	Bankruptcy Court's Order signed on 05/24/2006 granting application for interim professional compensation
8.	5673	Debtors' twentieth omnibus objection to Proofs of Claim
9.	5674	Affidavit of Craig Chancellor in support of Debtors' twentieth omnibus objection to Proofs of Claim
10.	6013	Affidavit in opposition to Debtor's twentieth omnibus claim objection by Mark Daley
11.	6014	Response to Debtor's 20 <sup>th</sup> omnibus claim objection by Mark Daley
12.	6017	Opposition Exhibits by Mark Daley
13.	7491	Debtors' Reply in support of the Debtor's twentieth omnibus objection to Proofs of Claim with regard to Claim No. 6027 filed by Mark Daley
14.	7491	Declaration of Casey Gunnell
15.	7698	Motion on applications of professionals for allowance of eighth and final interim compensation for services rendered and for reimbursement of actual and necessary expenses
16.	7699	Memorandum of Law by Mark Daley
17.	7699	Supplemental Affidavit By Mark Daley
18.	7716	Bankruptcy Court's Memorandum and Decision
19.	7732	Notice of Appeal (Entered: 3/23/2008)

Dated: New York, New York  
April 1, 2008

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